

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELL C. HOLMES,

Plaintiff,

v.

DAVID BAUGHMAN, et al..

Defendants.

No. 2:20-cv-1496 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. §1983. Before the court are plaintiff's motion to proceed in forma pauperis and plaintiff's complaint for screening. For the reasons set forth below, this court grants plaintiff's motion to proceed in forma pauperis, finds plaintiff has not stated any cognizable claims, and gives plaintiff an opportunity to amend his complaint.

**IN FORMA PAUPERIS**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and

forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

## SCREENING

### I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.

1 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
2 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

3 The Civil Rights Act under which this action was filed provides as follows:

4 Every person who, under color of [state law] . . . subjects, or causes  
5 to be subjected, any citizen of the United States . . . to the deprivation  
6 of any rights, privileges, or immunities secured by the Constitution .  
7 . . shall be liable to the party injured in an action at law, suit in equity,  
8 or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
11 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A  
12 person 'subjects' another to the deprivation of a constitutional right, within the meaning of §  
13 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform  
14 an act which he is legally required to do that causes the deprivation of which complaint is made."  
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

## 14 **II. Analysis**

### 15 **A. Allegations of the Complaint**

16 Plaintiff is currently an inmate at California State Prison, Lancaster. He complains of  
17 conduct that occurred in 2017 when he was incarcerated at California State Prison, Sacramento  
18 ("CSP-Sac"). Plaintiff identifies the following defendants: (1) Warden David Baughman; (2)  
19 Captain Riley; (3) Dr. Soltanian; and (4) Correctional Counselor O'Brain.

20 Plaintiff alleges that he requires the use of a heavy-duty walker at least in part because he had  
21 a total knee replacement in March 2017. When he was transferred to CSP-Sac on April 13, 2017,  
22 he informed intake personnel that he could not negotiate stairs and about his weak knee. He  
23 eventually obtained a "no stairs" chrono and was recommended for transfer to R.J. Donovan State  
24 Prison, apparently to accommodate his inability to negotiate stairs. However, he was not  
25 transferred for seven months. During that time, he had to pick up his walker to go up and down  
26 the stairs at CSP-Sac.

27 On July 24, 2017, plaintiff fell while attempting to walk downstairs. He injured his right  
28 knee. Plaintiff alleges that all defendants were aware he could not negotiate stairs but failed to

1 move him to an area where he would not have to do so. Plaintiff further complains that defendant  
2 Soltanian failed to order appropriate physical therapy for plaintiff's knee.

3 Plaintiff seeks compensatory and punitive damages and transfer to a prison where he can  
4 receive appropriate physical therapy.

5 **B. Does Plaintiff State Cognizable Claims?**

6 While plaintiff contends he is alleging claims of failure to protect and deliberate indifference,  
7 his allegations are best considered as claims that defendants were deliberately indifferent to  
8 plaintiff's serious medical needs in violation of the Eighth Amendment. To state an Eighth  
9 Amendment medical claim, plaintiff must allege facts showing he had a serious medical need and  
10 explaining what each defendant did that shows he was deliberately indifferent to that need.

11 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX  
12 Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

13 A medical need is serious "if the failure to treat the prisoner's condition could result in  
14 further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974  
15 F.2d at 1059 (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). In general, deliberate  
16 indifference may be shown when prison officials deny, delay, or intentionally interfere with  
17 medical treatment, or may be shown by the way in which prison officials provide medical care.  
18 Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988).

19 Plaintiff's complaint fails to state any claims for relief cognizable under 42 U.S.C. § 1983.  
20 While plaintiff sufficiently alleges that he had a serious medical need, he fails to explain just what  
21 each, individual defendant did that violated his constitutional rights. Plaintiff states only that  
22 defendants Baughman, Riley, and O'Brain should have known he could not negotiate stairs and  
23 also should have known plaintiff might fall. Plaintiff must present facts demonstrating the actual  
24 knowledge of each of these defendants of plaintiff's medical need and facts showing that they  
25 could have, but failed to, address that need.

26 With respect to Dr. Soltanian, plaintiff must provide specific details showing that Soltanian  
27 was aware of plaintiff's knee problems and use of a walker. He must also provide details

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1 showing what Soltanian did, or did not do, in response to the knowledge that plaintiff could not  
2 negotiate stairs and that plaintiff required physical therapy.

### 3 CONCLUSION

4 For the foregoing reasons, this court finds plaintiff has failed to state any claims for relief  
5 cognizable under 42 U.S.C. § 1983. Plaintiff will be given an opportunity to amend his  
6 complaint.

7 In an amended complaint, plaintiff must address the problems with his complaint that are  
8 explained above and consider the legal standards provided by the court. Plaintiff is advised that  
9 in an amended complaint he must clearly identify each defendant and the action that defendant  
10 took that violated his constitutional rights. The court is not required to review exhibits to  
11 determine what plaintiff's charging allegations are as to each named defendant. If plaintiff  
12 wishes to add a claim, he must include it in the body of the complaint. The charging allegations  
13 must be set forth in the amended complaint so defendants have fair notice of the claims plaintiff is  
14 presenting. That said, plaintiff need not provide every detailed fact in support of his claims.  
15 Rather, plaintiff should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

16 Any amended complaint must show the federal court has jurisdiction, the action is brought in  
17 the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must contain a  
18 request for particular relief. Plaintiff must identify as a defendant only persons who personally  
19 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.  
20 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
21 constitutional right if he does an act, participates in another's act or omits to perform an act he is  
22 legally required to do that causes the alleged deprivation). "Vague and conclusory allegations of  
23 official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d  
24 266, 268 (9th Cir. 1982) (citations omitted).

25 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.  
26 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.  
27 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
28 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

1 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
2 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
3 heightened pleading standard in cases other than those governed by Rule 9(b)”; Fed. R. Civ. P.  
4 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be  
5 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
6 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
7 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

8 An amended complaint must be complete in itself without reference to any prior pleading.  
9 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.  
10 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has  
11 evidentiary support for his allegations, and for violation of this rule the court may impose  
12 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

13 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as  
14 follows:

15 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
18 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the  
19 Director of the Department of Corrections and Rehabilitation filed concurrently herewith.

20 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend.

21 4. Plaintiff is granted sixty days from the date of service of this order to file an amended  
22 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of  
23 Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket  
24 number assigned this case and must be labeled “First Amended Complaint;” failure to file an  
25 amended complaint in accordance with this order may result in a recommendation that this  
26 action be dismissed.

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5. The Clerk of the Court is directed to provide plaintiff with a copy of the prisoner complaint form used in this district.

Dated: October 1, 2020

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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